

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0486

Affirmed
Disqualification

PROCEDURAL HISTORY: On March 14, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and was disqualified from receiving unemployment insurance benefits effective February 20, 2022 (decision # 113131). Claimant filed a timely request for hearing. On April 12, 2022, ALJ Wardlow conducted a hearing, at which the employer failed to appear, and on April 13, 2022 issued Order No. 22-UI-191241, affirming decision # 113131. On April 18, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB did not consider claimant's written argument when reaching this decision because they did not include a statement declaring that they provided a copy of their argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019).

FINDINGS OF FACT: (1) McDonald/Jacobs PC employed claimant as a receptionist from October 6, 2021 until February 25, 2022.

(2) On or about January 1, 2022, claimant noticed their manager began walking away at times without answering their questions or ending telephone calls abruptly by hanging up on them. Claimant thought this behavior was rude.

(3) In mid-February 2022, claimant heard that someone had been assaulted in the shared building where the employer's Portland, Oregon office is located. Claimant sent an all-employee email advising of the incident without first getting approval from their manager to send it. Claimant intended to send the email only to employees who worked in the building where the employer's Portland office was located, but included employees of other branches by mistake.

(4) On or about February 18, 2022, claimant met with their manager. The manager stated that the employer no longer took claimant seriously because of the email incident. Claimant apologized for sending the email to all employees. The manager stated that claimant needed to "level up" because they had been working for the employer for about six months and was still making mistakes. Transcript at 16.

(5) On February 25, 2022, claimant sent the manager an instant message stating that they had placed mail in the manager's mailbox, though at that time the manager's mail was still at claimant's workstation. A few minutes later, the manager came out of her office and asked claimant in a "pointed" tone why the mail was not in her mailbox. Transcript at 8. The manager was not physically threatening toward claimant. Claimant intended to place the mail in the manager's mailbox, but had not yet done so because they thought, incorrectly, that the manager was not in the office that day. Claimant began to explain, but the manager turned away from claimant as they were speaking. Claimant continued working for the next 35 minutes and each time the manager walked by their workstation, claimant tried to explain, but the manager would not listen.

(6) Claimant thought the manager's reaction was disrespectful and created a hostile work environment. For that reason, claimant left work on February 25, 2022 and never worked for the employer again.

CONCLUSIONS AND REASONS: Claimant voluntarily left work without good cause.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless they prove, by a preponderance of the evidence, that they had good cause for leaving work when they did. ORS 657.176(2)(c); *Young v. Employment Department*, 170 Or App 752, 13 P3d 1027 (2000). "Good cause . . . is such that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would leave work." OAR 471-030-0038(4) (September 22, 2020). "[T]he reason must be of such gravity that the individual has no reasonable alternative but to leave work." OAR 471-030-0038(4). The standard is objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P3d 722 (2010). A claimant who quits work must show that no reasonable and prudent person would have continued to work for their employer for an additional period of time.

Claimant failed to meet their burden to prove that they quit work with good cause. The final incident that preceded claimant's decision to quit working for the employer was their manager's behavior on February 25, 2022, in which she asked claimant in a "pointed" tone why her mail was not in her mailbox and walked away when claimant tried to explain. Transcript at 8. The record shows that the manager was not physically threatening toward claimant on February 25, 2022 and did not subject claimant to oppression, discrimination, name-calling or other abusive language. Therefore, while the manager's conduct on February 25, 2022 may have been curt, claimant did not establish that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would leave work based on it.

At hearing, claimant also testified that the "last straw" in their decision to voluntarily quit was when the manager informed them during the February 18, 2022 meeting that the employer did not take claimant seriously and claimant needed to "level up" after they mistakenly sent the email about the assault in the building to all employees. Transcript at 26. The record does not show that the manager's comments during the February 18, 2022 meeting subjected claimant to abuse, oppression, name-calling, foul language, or threats of physical harm that would have rendered claimant's situation grave. While the record shows that the employer lacked confidence in claimant's performance after the email incident, claimant did not establish that they faced imminent discharge because they sent the email, or that being discharged would negatively affect their future job prospects. *See McDowell v. Employment Dep't.*, 348 Or 605, 236 P3d 722 (2010) (claimant had good cause to quit work to avoid being discharged, not for misconduct, when the discharge was imminent, inevitable, and would be the "kiss of death" to

claimant's future job prospects). Therefore, claimant did not show that the manager's treatment of them, or the employer's lack of confidence in their performance, presented them with a situation of such gravity that they had no reasonable alternative but to leave work when they did.

For these reasons, claimant quit work without good cause and is disqualified from receiving unemployment insurance benefits effective February 20, 2022.

DECISION: Order No. 22-UI-191241 is affirmed.

D. Hettle and A. Steger-Bentz;
S. Serres, not participating.

DATE of Service: July 6, 2022

NOTE: You may appeal this decision by filing a Petition for Judicial Review with the Oregon Court of Appeals within 30 days of the date of service listed above. *See* ORS 657.282. For forms and information, you may write to the Oregon Court of Appeals, Records Section, 1163 State Street, Salem, Oregon 97310 or visit the Court of Appeals website at courts.oregon.gov. Once on the website, use the 'search' function to search for 'petition for judicial review employment appeals board'. A link to the forms and information will be among the search results.

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Understanding Your Employment Appeals Board Decision

English

Attention – This decision affects your unemployment benefits. If you do not understand this decision, contact the Employment Appeals Board immediately. If you do not agree with this decision, you may file a Petition for Judicial Review with the Oregon Court of Appeals following the instructions written at the end of the decision.

Simplified Chinese

注意 – 本判決會影響您的失業救濟金。如果您不明白本判決，請立即聯繫就業上訴委員會。如果您不同意此判決，您可以按照該判決結尾所寫的說明，向俄勒岡州上訴法院提出司法複審申請。

Traditional Chinese

注意 – 本判決會影響您的失業救濟金。如果您不明白本判決，請立即聯繫就業上訴委員會。如果您不同意此判決，您可以按照該判決結尾所寫的說明，向俄勒岡州上訴法院提出司法複審申請。

Tagalog

Paalala – Nakakaapekto ang desisyong ito sa iyong mga benepisyo sa pagkawala ng trabaho. Kung hindi mo naiintindihan ang desisyong ito, makipag-ugnayan kaagad sa Lupon ng mga Apela sa Trabaho (Employment Appeals Board). Kung hindi ka sumasang-ayon sa desisyong ito, maaari kang maghain ng isang Petisyon sa Pagsusuri ng Hukuman (Petition for Judicial Review) sa Hukuman sa Paghahabol (Court of Appeals) ng Oregon na sinusunod ang mga tagubilin na nakasulat sa dulo ng desisyong ito.

Vietnamese

Chú ý - Quyết định này ảnh hưởng đến trợ cấp thất nghiệp của quý vị. Nếu quý vị không hiểu quyết định này, hãy liên lạc với Ban Kháng Cáo Việc Làm ngay lập tức. Nếu quý vị không đồng ý với quyết định này, quý vị có thể nộp Đơn Xin Tái Xét Tư Pháp với Tòa Kháng Cáo Oregon theo các hướng dẫn được viết ra ở cuối quyết định này.

Spanish

Atención – Esta decisión afecta sus beneficios de desempleo. Si no entiende esta decisión, comuníquese inmediatamente con la Junta de Apelaciones de Empleo. Si no está de acuerdo con esta decisión, puede presentar una Aplicación de Revisión Judicial ante el Tribunal de Apelaciones de Oregon siguiendo las instrucciones escritas al final de la decisión.

Russian

Внимание – Данное решение влияет на ваше пособие по безработице. Если решение Вам непонятно – немедленно обратитесь в Апелляционный Комитет по Трудоустройству. Если Вы не согласны с принятым решением, вы можете подать Ходатайство о Пересмотре Судебного Решения в Апелляционный Суд штата Орегон, следуя инструкциям, описанным в конце решения.

Khmer

ចំណុចសំខាន់ – សេចក្តីសម្រេចនេះមានផលប៉ះពាល់ដល់អត្ថប្រយោជន៍គ្មានការងារធ្វើរបស់លោកអ្នក។ ប្រសិនបើលោកអ្នកមិនយល់អំពីសេចក្តីសម្រេចនេះ សូមទាក់ទងគណៈកម្មការឧទ្ធរណ៍ការងារភ្លាមៗ។ ប្រសិនបើលោកអ្នកមិនយល់ស្របចំពោះសេចក្តីសម្រេចនេះទេ លោកអ្នកអាចដាក់ពាក្យប្តឹងសុំឲ្យមានការពិនិត្យរឿងក្តីឡើងវិញជាមួយតុលាការឧទ្ធរណ៍រដ្ឋ Oregon ដោយអនុវត្តតាមសេចក្តីណែនាំដែលសរសេរនៅខាងចុងបញ្ចប់នៃសេចក្តីសម្រេចនេះ។

Laotian

ເອົາໃຈໃສ່ – ຄຳຕັດສິນນີ້ມີຜົນກະທົບຕໍ່ກັບເງິນຊ່ວຍເຫຼືອການຫວ່າງງານຂອງທ່ານ. ຖ້າທ່ານບໍ່ເຂົ້າໃຈຄຳຕັດສິນນີ້, ກະລຸນາຕິດຕໍ່ຫາຄະນະກຳມະການອຸທອນການຈ້າງງານໃນທັນທີ. ຖ້າທ່ານບໍ່ເຫັນດີນຳຄຳຕັດສິນນີ້, ທ່ານສາມາດຍື່ນຄຳຮ້ອງຂໍການທົບທວນຄຳຕັດສິນນຳສານອຸທອນລັດ Oregon ໄດ້ ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນຫ້າຍຂອງຄຳຕັດສິນນີ້.

Arabic

هذا القرار قد يؤثر على منحة البطالة الخاصة بك، إذا لم تفهم هذا القرار، إتصل بمجلس منازعات العمل فوراً، و إذا كنت لا توافق على هذا القرار، يمكنك رفع شكوى للمراجعة القانونية بمحكمة الاستئناف بأوريغون و ذلك بإتباع الإرشادات المدرجة أسفل القرار.

Farsi

توجه - این حکم بر مزایای بیکاری شما تاثیر می گذارد. اگر با این تصمیم موافق نیستید، بلافاصله با هیأت فرجام خواهی استخدام تماس بگیرید. اگر از این حکم رضایت ندارید، می‌توانید با استفاده از دستور العمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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